

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED SECTION
JUN 20 1994

2 45 PM '94

MM Docket No. 92-291 ✓

In the Matter of

Amendment of Section 73.202(b).

RM-8133

Table of Allotments.

FM Broadcast Stations.

(Cambridge and St. Michaels,
Maryland)

REPORT AND ORDER (Proceeding Terminated)

Adopted: June 8, 1994;

Released: June 17, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of C. W. A. Broadcasting ("CWA"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 8545 (1992), proposing the reallocation of Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, and modification of Station WFBR(FM)'s construction permit to specify St. Michaels, Maryland, as its community of license. CWA filed comments restating its intention to implement the change.¹ Prettyman Broadcasting Company ("Prettyman Broadcasting") filed opposing comments. CWA and Prettyman filed reply comments.

2. Prettyman Broadcasting, licensee of Station WICO-FM, Salisbury, Maryland, opposes the reallocation of Channel 232A to St. Michaels, contending that such action not only compromises the integrity of the allocation process but would adversely affect other licensees and Cambridge residents.² Prettyman Broadcasting argues that, in almost two years, CWA failed to make any progress towards the construction of an FM facility in Cambridge and now proposes to reallocate Channel 232A to St. Michaels, a community significantly smaller than Cambridge already receiving city grade service from eight radio stations.³ Prettyman Broadcasting expresses concern that some of CWA's recent actions cast serious doubts on whether it will

be able to fulfill its obligation to construct an FM facility and reimburse Prettyman Broadcasting for expenses associated with changing WICO-FM's channel. Prettyman Broadcasting requests that CWA be instructed to re-certify its ability to reimburse Prettyman Broadcasting. Further, Prettyman Broadcasting respectfully requests that should the proposed allotment be rejected, that it be released from its obligation to change frequencies at Salisbury.

3. We shall deny Prettyman Broadcasting's request to be released from its obligation to change its frequency. That request is premature. The *Report and Order* in MM Docket 84-1043 ordered Prettyman Broadcasting to change its channel from 232A to 248A to accommodate the allotment of Channel 232A at Cambridge. CWA holds a construction permit for Channel 232A at Cambridge and has stated its willingness to reimburse Prettyman Broadcasting for its expenses for changing channels. In the event CWA proves unwilling or unable to discharge its obligation and no applicant for the vacant allotment undertakes to reimburse Prettyman Broadcasting, the Commission will at that time, entertain a request to release Prettyman Broadcasting from its obligation to change frequency.

4. Upon further review of this proposal, we concluded that it cannot be adopted consistent with Commission requirements. In adopting a procedure for the modification of FM stations to a new community of license, the Commission specifically stated that it would be concerned "if a situation were to arise where a licensee or permittee proposed to change its community of license, and that licensee or permittee had received in a comparative hearing a decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community." *Memorandum Opinion and Order on Reconsideration* in MM Docket 88-526, 5 FCC Rcd 7094, 7097 (1990). The Commission noted that a number of qualitative enhancements in the comparative process have a particular nexus with the community of license. Recognizing the potential for subversion of the comparative process, the Commission placed the burden on petitioners to address this concern. *Id.* The petitioner in this case falls squarely within the Commission's requirements. CWA was granted a construction permit for Channel 232A at Cambridge as a result of prevailing in a comparative hearing in which the Administrative Law Judge awarded it, "a decisive 100% integration credit, enhanced by minority ownership, and past civic activities within the service area." *See Big Bay Broadcasting*, 4 FCC Rcd 4676, 4686 (1989). CWA has not addressed this issue.⁴

¹ In response to the *Notice*, petitioner also provided an affidavit verifying the statements in the petition.

² Station WICO-FM was ordered to operate on Channel 248A in MM Docket 84-1043. *See* 50 FR 34466, August 26, 1985. The channel substitution at Salisbury was made to accommodate the allotment of Channel 232A at Cambridge. The *Report and Order* in that proceeding indicated that the ultimate permittee of FM Channel 232A at Cambridge was responsible for reimbursement for the expenses incurred by Station WICO-FM in changing channels. The construction permit for Station WFBR(FM), Cambridge, is conditioned on Station WICO-FM changing channels. On September 19, 1986, Prettyman Broadcasting was granted permission from the FCC to continue WICO-FM's operations on Channel 232A until a permittee at Cambridge ini-

tiated program tests. *See Letter from Charles Schott, Chief, Policy and Rules Division*, dated September 19, 1986.

³ CWA was granted a construction permit for Channel 232A on June 20, 1990 (BPH-851028MJ) and has filed a third extension request (BMPH-930601JB).

⁴ We note that although CWA has demonstrated that zoning difficulties render its presently authorized site unavailable, it has not demonstrated that this is the only usable site for Channel 232A in Cambridge. Therefore, we need not address whether the Commission's decision in *Pinkeyville, IL*, 41 RR 2d 69, 71 (1977), *Blackshear, Richmond Hill, and Folkston, Georgia*, 2 FCC Rcd 3323 (1987), *Valley Springs, California*, 2 FCC Rcd 2036 (1987), and *Wadley and Dadeville, Alabama*, 60 RR 2d 1462 (1986), are applicable.

5. Accordingly, based on the above discussion, IT IS ORDERED. That the petition for rule making submitted by C. W. A. Broadcasting for the reallocation of Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, IS DISMISSED.⁵

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁵ The dismissal of this proposal makes no determination on St. Michael's requirements for allotment of an FM channel nor does it preclude CWA from requesting a change of community

once it has been on the air in Cambridge for a period of one year or more.